

Memorandum of Agreement

**Confidential Employees' Organization (CEO)
Local 101
AFSCME, AFL-CIO**

City of San José



September 25, 2005 - September 20, 2008

Confidential Employees' Organization

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The Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, on September 25, 2005 by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the Confidential Employees' Organization, Local No. 101, American Federation of State, County, and Municipal Employees, AFL-CIO, hereinafter referred to as the "Employee Organization" or "Organization".

For the purpose of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 – Definitions of Resolution No. 39367 of the Council of the City of San Jose and in Part 2 – Definitions of Chapter 3.04 of Title III, of the San Jose Municipal Code unless it is apparent from the context or from the specific language that a different meaning is intended.

ARTICLE 1 RECOGNITION

- 1.1 Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Confidential Employees' Organization, Local 101, AFSCME, AFL-CIO, hereinafter referred to as the Employee Organization is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions therefrom shall constitute an appropriate unit.
- 1.2 The City agrees to meet and confer with the Employee Organization prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

ARTICLE 2 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the Confidential Employees' Organization, AFSCME, Local 101, AFL-CIO.

ARTICLE 3 PERIOD OF MEMORANDUM OF AGREEMENT

- 3.1 This Agreement shall become effective September 25, 2005, except where otherwise provided, and shall remain in effect through September 20, 2008. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties. Copies of this Agreement, as originally executed, shall be printed in a number sufficient to provide one copy for each employee represented by the Employee Organization. The costs of such printing shall be shared equally by the parties, unless the printing of such Agreements

are reproduced utilizing City facilities, in which case the City shall bear the cost of such printing.

- 3.2 It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the Employee Organization shall exert every reasonable effort to submit any proposed changes or additions to this Agreement on or before August 1, 2008. The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.

ARTICLE 4 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 4.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 4.2 Existing benefits within the scope of representation provided by ordinance or resolution of the City Council or provided in the San Jose Municipal Code shall be continued without change during the term of this Agreement. Such existing benefits that are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 4.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 4.4 Existing benefits within the scope of representation provided in the City Policy Manual and the Employee Services Benefits Handbook shall be continued without change during the term of this agreement, unless advance notice is given to the Union, pursuant to Article 37.
- 4.5 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

ARTICLE 5 AUTHORIZED REPRESENTATIVES

- 5.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:
- 5.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer, or his/her duly authorized representative except where a particular Management representative is otherwise designated.
- 5.2 The Employee Organization's principal authorized agent shall be the President, or his/her duly authorized representative.

ARTICLE 6 HOURS OF WORK AND OVERTIME

- 6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.
- 6.2 The work day, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 6.3 The normal work schedule shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period of at least thirty (30) minutes, Monday through Friday, except for those employees electing and approved for an alternate work schedule as defined in Article 32. The length of any lunch period is subject to supervisory approval.
- 6.3.1 Employees required to perform duties as support personnel of uniformed classifications assigned a schedule of four (4) ten (10) hour shifts per work week may also be assigned a schedule of four (4) ten (10) hours shifts per workweek.
- 6.4 The work period for purposes of the Fair Labor Standards Act may be designated for each employee as appropriate so that there is no overtime built into the regularly scheduled workweek.
- 6.5 The City may establish a work schedule other than Monday through Friday where the interests of, or service to, the public requires. Employees assigned to a five (5) day eight (8) hour schedule or to a schedule including nine (9) hour days shall be given two (2) consecutive days off, and employees assigned to a four (4) day ten (10) hour shift shall be given three (3) consecutive days off, even though such days off are in different workweeks, except where, due to a change in the employee's work schedule, it is impossible to provide two (2) or three (3) consecutive days off, whichever is applicable. As an alternate to consecutive days off, an employee may work a schedule without consecutive days off when the schedule is mutually agreed upon between the Department and the employee. Such an agreement may be rescinded by the employee or the Department with reasonable notice, but not less than fourteen (14) calendar days, absent emergency, to the employee or Department.
- 6.6 The Department Director, subject to regulation and control by the City Manager, shall determine the number of hours of work per work day and work week for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.
- 6.7 An employee who works a normal work schedule as defined by Article 6.3 and is authorized or required to work overtime who works in excess of eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four (4) ten (10) hour work days, or in excess of forty (40) hours per work week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her workweek requirement.
- 6.7.1 Part-time employees are only eligible for overtime pay if the employee works over forty (40) hours in one (1) week.

- 6.8 An employee who is assigned or elects and is approved for an Alternative Work Schedule as defined by Article 32 and is authorized or required to work overtime who works in excess of the regular daily hours scheduled under that Alternative Work Schedule, or in excess of 80 hours per biweekly pay period, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement.
- 6.9 Overtime worked shall be compensated at the time and one-half (1-1/2) rate. An employee assigned to work overtime may elect to either be paid for such overtime or be credited with compensatory time off, except under the following circumstances:
- The employee's choice of compensatory time would interfere with a department's ability to recover the cost of overtime;
 - The employee's choice of compensatory time would interfere with the department's ability to have sufficient staffing or coverage;
 - The employee's choice of pay cannot be accommodated within the department's overtime budget;
 - If the work is being performed for another City department or outside agency, the employee's department may choose to compensate overtime with pay or compensatory time, provided the employee is notified of the method of payment prior to working the overtime; or
 - If the employee fails to request an election during the pay period in which the overtime is worked
 - If the employee is not allowed to make the election to be paid for overtime or to be credited with compensatory time under one of the circumstances cited above, the employee shall be informed of the reason for not being allowed such choice. The explanation shall be provided before the overtime is worked.
- 6.9.1 Once compensatory time off has been approved and scheduled, the employee shall be permitted to take such time off, unless emergency circumstances necessitate cancellation of the time off. In such event, the employee will remain credited with the time canceled.
- 6.9.2 Part-time employees who are assigned and work in excess of forty (40) hours per week shall be compensated at the time and one-half (1-1/2) rate. A part-time employee who is assigned and works in excess of forty (40) hours per week may elect to either be paid for such overtime or credited with compensatory time off, except under the above listed circumstances.
- However, at no time shall a part-time employee's compensatory time balance exceed forty (40) hours. Once an employee's compensatory time balance reaches forty (40) hours, employees shall be paid for all time assigned and worked in excess of forty (40) hours per week.
- 6.9.3 Notwithstanding any other provision of Section 6.9 to the contrary, the Director of a Department may announce the intent of the Department to pay employees the

appropriate rate for accrued compensatory time that is not used as of a date specified by the department, with reasonable notice of no less than thirty (30) days provided to affected employees. This announced intent may apply to an entire department or to a specified section(s) of a department. An employee who is scheduled and approved to take compensatory time off may request an exemption to the payout. The request shall be made to the Department Director, or his/her designee, and his/her decision shall be final.

6.10 Time spent on paid sick leave, disability leave, holiday leave, vacation leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article.

6.11 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the will or the administrator of the estate.

6.12 A fifteen (15) minute rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

6.12.1 Part-time employees will be provided a fifteen (15) minute rest period during each uninterrupted work period of at least four (4) hours.

6.13 Canceled Work

If an employee is scheduled to work overtime on his/her day off and the work is canceled within twenty-four (24) hours of the scheduled overtime, the employee is entitled to two (2) hours compensation at the appropriate rate.

6.14 Telecommuting

An employee authorized or required to telecommute, which requires at least one half hour (1/2) shall be compensated for the time worked to the nearest half hour (1/2) at the appropriate rate.

An employee must receive approval from his/her supervisor in order to telecommute and be compensated as stated above.

ARTICLE 7 WAGES AND SPECIAL PAY

7.1 Wages

7.1.1 Wages 2005-2006. Effective September 25, 2005, all salary ranges for employees holding positions in classifications assigned to CEO shall be increased by approximately 1.5%. The 2005-2006 salary ranges are listed in Exhibit I.

- 7.1.1.1 Employees holding positions in classifications assigned to CEO will receive a special adjustment of .25% for a total of a 1.75% increase, including the 1.5% general wage increase, effective September 25, 2005.
- 7.1.2 Wages 2006-2007. Effective September 24, 2006, all salary ranges for employees holding positions in classifications assigned to CEO shall be increased by approximately 3.75%. The 2006-2007 salary ranges are listed in Exhibit II.
- 7.1.3 Wages 2007-2008. Effective September 23, 2007, all salary ranges for employees holding positions in classifications assigned to CEO shall be increased by approximately 3.0%. The 2007-2008 salary ranges are listed in Exhibit III.
- 7.1.4 Employees assigned to part-time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full-time classification.
- 7.2 Shift Differential
 - 7.2.1 A swing shift differential of one dollar and fifty cents (\$1.50) an hour shall be paid to employees for each regularly scheduled hour worked after 2:00 p.m. if at least four (4) hours of a regularly assigned scheduled of continuous work hours are worked after 5:00 p.m.
 - 7.2.2 A night shift differential of one dollar and seventy-five cents (\$1.75) per hour shall be paid to employees for each regularly scheduled hour worked after 11:00 p.m. and prior to 8:00 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 11:00 p.m. and before 8:00 a.m.
 - 7.2.3 Shift differential shall be paid to an employee for the hours worked when assigned to cover another employee's temporary absence and when the absent employee would have otherwise qualified for shift differential as defined above.
 - 7.2.4 Paid leave time does not qualify for payment of shift differential except when an employee uses a minimum of forty (40) consecutive hours of vacation, compensatory time or personal leave. The employee will continue to be paid shift differential as though they had worked their assigned shift during the period of vacation. City observed holiday hours may be credited towards meeting the forty (40) consecutive vacation hours requirement, however, holiday leave hours do not qualify for payment of shift differential.
 - 7.2.5 Except as otherwise required by State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.
- 7.3 Working in a Higher Classification
 - 7.3.1 Upon specific assignment by the Department Director, or his/her designated representative, with prior written approval, a full-time or part-time employee may be required to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee or vacant positions. Assignments to a higher classification due to a vacancy shall not exceed six (6) months. Once an

employee reaches the six (6) month maximum in a specific higher class assignment due to a vacancy, the employee shall not be eligible to serve in the same higher class assignment for at least six (6) months and shall return to his/her regular assignment.

7.3.1.1 By mutual agreement between the City and the Employee Organization, an employee assigned to work in a higher classification may be extended in his/her specific assignment past the aforementioned six (6) month limitation.

7.3.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) higher in the salary range schedule than the rate received by the employee in the employee's present class. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all the eligible hours worked in the higher class within the pay period.

7.4 Legal Service

7.4.1 The City agrees to pay to the Confidential Employees' Organization, Local No. 101, AFSCME, AFL-CIO Legal Trust Fund the sum of four dollars and twenty-five cents (\$4.25) per month for each full-time employee on the payroll for the last pay period ending prior to the first of each month for private legal service benefits for such employees and their dependents subject to the following:

7.4.1.1 No portion of the sums heretofore paid or subsequently paid shall be used to provide legal services for any employee or dependents in any action or proceeding in which the Employee Organization is a party or in which the City is a party, and

7.4.1.2 No portion of the sums heretofore paid or subsequently paid shall be used in connection with any matter, action or proceeding involving employer-employee relations involving the City, its commissions, officers, or employees; except

7.4.1.3 The provisions of 7.4.1.1 and 7.4.1.2 notwithstanding, a portion of the sum so paid may be used to pay the Employee Organization's portion of the cost of the arbitrator, including the arbitrator's legitimate expenses, and the Employee Organization's share of the transcript(s) of the arbitration proceeding. Further, a portion of the sum so paid may be used to reimburse City employees for time spent as witnesses in arbitration proceedings involving the Employee Organization and the City provided such time is spent during regularly scheduled working hours. The compensation, however, shall not include any payment for any such time spent in arbitration proceedings involving the Employee Organization and the City which falls outside the employee's regularly scheduled working hours.

- 7.4.1.4 The City shall have the right, through independent auditors selected by the City, upon written request to periodically review and audit the books and records of the fund in San Jose at reasonable times, to determine whether the Employee Organization has complied with the conditions contained herein. The Employee Organization shall, upon completion of any such reviews and audits, reimburse the City for half of the costs thereof within ten (10) days after receipt of a statement of such costs from the City.
- 7.4.1.5 Failure of the Employee Organization to maintain such books and records or to make such books and records available in San Jose or to permit such inspection, or to pay half of the costs of such review and audit shall constitute grounds for the City to terminate or suspend, in its discretion, the payment of further payments; and
- 7.4.1.6 If upon inspection of the books and records the City determines that any portion of the sum contributed has been diverted to purposes not permitted by the provisions of this Article, the City may, in addition to any other remedies available to it under law, suspend or terminate further payments.
- 7.4.1.7 As used herein, action or proceedings shall include, but not be limited to, court proceedings, proceedings or hearings or appearances before legislative, administrative, or quasi-judicial agencies or bodies and arbitration, except to the extent provided in paragraph 7.4.1.2 herein above, fact-finding, mediation, or other similar dispute resolving procedures.

7.5 Benefits Review

The Benefits Review Forum (BRF) may evaluate and recommend changes in Health, Dental and other employee Insurance plans. Any recommendations of the BRF shall be determined by a consensus of the non-sworn, officially recognized bargaining unit members of the Forum, subject to the ratification of the CEO Union membership. The City shall consider the recommendations made by the BRF.

7.6 Health Insurance

- 7.6.1 The City will provide health coverage for eligible full-time employees and their dependants in accordance with one of the available plans. The City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage. The employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of twenty-five dollars (\$25) per month. If the employee-contributed ten percent (10%) of the lowest priced plan exceeds twenty-five dollars (\$25) per month, the City will pay the difference. If the Employee selects a plan other than the lowest priced plan, the Employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.
- 7.6.2 Effective the beginning of pay period one (1) of payroll calendar year 2006, the City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage. The employee will pay ten percent (10%) of the premium for the lowest priced plan up to a

maximum of fifty dollars (\$50) per month. If the employee contributed ten percent (10%) of the lowest priced plan exceeds fifty dollars (\$50) per month, the City will pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

7.6.3 Effective the beginning of pay period one (1) of payroll calendar year 2007, the City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage. The employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one-hundred dollars (\$100) per month. If the employee contributed ten percent (10%) of the lowest priced plan exceeds one-hundred dollars (\$100) per month, the City will pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

7.6.4 Effective the beginning of pay period one (1) of payroll calendar year 2008, the City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage. The employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one hundred and fifty dollars (\$150) per month. If the employee contributed ten percent (10%) of the lowest priced plan exceeds one hundred and fifty dollars (\$150) per month, the City will pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

7.7 Dental Insurance

7.7.1 The City will provide dental coverage for eligible full-time employees and their dependents in accordance with one of the two available plans. The plans are described in the City of San Jose Employee Benefits Handbook.

7.7.2 Effective at the beginning of pay period one (1) of payroll calendar year 2006, the City will provide dental coverage in the lowest priced plan for eligible full-time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay ninety-five percent (95%) of the full premium cost for the selected dental coverage for eligible full-time employees and their dependents and the employee shall pay five percent (5%) of the full premium cost of the selected plan.

7.7.3 Retirees who meet the eligibility requirements defined in Ordinance No. 22261 amending Sections 3.24, Part 24, and 3.28, Part 17, Title 3 of the San Jose Municipal Code are entitled to dental insurance coverage as a benefit of the Federated Retirement System.

7.7.4 If a retiree who has selected the prepaid dental coverage option moves a significant distance away from a designated dental center, that employee may elect to be covered by other available option(s).

7.8 Vision Care

The City will contribute towards vision care for eligible full-time employees up to sixteen dollars (\$16.00) per month (\$8.00 for 24 biweekly pay periods) or the cost of the premium, whichever is less, for coverage under a vision plan sponsored by the City. The employee shall pay the difference between the City contribution and the total premium of the vision care plan selected by the employee.

7.9 Payment-In-Lieu of Health and/or Dental Insurance Program

- 7.9.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.
- 7.9.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty percent (50%) of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty percent (50%) of that contribution.
- 7.9.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Employee Services. Alternate coverage must be acceptable by the City.
- 7.9.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period, or within thirty (30) days of a qualifying event as defined in the Employee Services Benefits Handbook, occurring anytime during the year. Employees who miss the thirty (30) day time limit after a qualifying event must wait until the next open enrollment period to enroll in payment-in-lieu of insurance programs. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.
- 7.9.5 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.
- 7.9.6 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

7.9.6.1 **HEALTH INSURANCE:** To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

7.9.6.2 **DENTAL INSURANCE:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

7.10 Call Back

An employee who is called back and reports to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate. This section shall apply on either a work day after the employee has left work or on a day off. It shall not apply to scheduled overtime or during a regular shift. No employee shall be entitled to more than one (1), three (3)-hour minimum call back per eight (8) hour shift. Compensation for subsequent call backs shall be for actual time worked.

7.11 Jury Duty

7.11.1 Each full-time employee, or each part-time employee who is eligible for benefits under Article 24 of this Agreement, who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive the regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify the immediate supervisor. Eligibility for jury compensation shall be subject to the following:

7.11.1.1 Employees assigned to a day shift, including employees regularly assigned to a shift beginning between 12:00 Noon and 1:59 p.m.

7.11.1.1.1 In the cases in which the employee is released by the Court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of his/her shift. For this he/she receives the full day's pay, and shall pay to the City the amount he/she receives from the court for the jury duty, excluding mileage.

7.11.1.1.2 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, he/she will receive no pay from the City for that day, but will be entitled to keep the jury fee.

7.11.1.1.3 In the case in which the employee is not released by the Court until after 1:00 p.m., he/she need not return to work. He/she receives the full day's pay, and shall pay to the City the jury fee, excluding mileage.

7.11.1.1.4 Employees regularly assigned to a shift beginning between 12:00 Noon and 1:59 p.m., shall be considered day shift employees for purposes of this section.

7.11.2 Employees assigned to a swing or graveyard shift:

- 7.11.2.1 Employees assigned to a swing or graveyard shift, as defined in Section 7.2, if released by the court at 1:00 p.m. or earlier shall report for duty at the scheduled beginning of the employee's assigned shift.
- 7.11.2.2 In the event the employee is required to report for jury duty the following day, the employee will be excused without loss of compensation two (2) hours before the end of the scheduled shift, but no earlier than 10:00 p.m. for employees assigned to a swing shift or 6:00 a.m. for employees assigned to a graveyard shift.
- 7.11.2.3 Employees assigned to a swing or graveyard shift who are not released by the court at 1:00 p.m. or earlier, he/she shall not be required to report for duty on the scheduled shift on that day and shall receive a full day's pay, less jury fee.
- 7.11.2.4 In the event an employee is released by the court at 1:00 p.m. or earlier and fails to report for duty as required by 7.11.2.1 above, such employee shall not receive any compensation from the City for that shift but may keep the jury fee.

7.12 Witness Leave

- 7.12.1 Each full-time employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of his/her employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive his/her regular salary during the term of his/her service as a witness under subpoena, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action.
- 7.12.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with his/her employment, shall be credited with overtime for the time spent in court, or for two (2) hours, whichever is greater, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action.
- 7.12.3 Upon service of subpoena, an employee shall immediately advise his/her Department Director or supervisor thereof, and of the time when he/she is required to appear in Court.

7.13 Educational and Professional Incentives

- 7.13.1 The City will reimburse each employee 100% of expenses incurred, up to \$1,000 per fiscal year, for registration, tuition, fees, and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or

designee. Of the \$1,000 amount, up to \$300.00 may be used for non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service, as approved by the Department Director or designee. Section 5.01 of the City Policy Manual outlines additional details of the program.

7.13.2 The City supports special training and professional development opportunities for the whole bargaining unit or major subgroups of the bargaining unit, e.g., Analysts or Administrative Staff. Ideas for training and professional development may be proposed by bargaining unit groups to be developed in conjunction with a liaison appointed by the City Manager.

7.13.3 Each employee will be allowed a minimum of eight (8) hours paid release time per year to attend training and/or professional development classes developed under section 7.13.2. Additional subjects proposed by bargaining unit groups not covered under the eight (8) hour allotment may be incorporated into regular training programs provided by the City.

7.13.4 If an employee is denied educational and professional incentives under the requirements set forth above, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Employee Services, or designee. The written decision of the Director of Employee Services, or designee shall be final, with no process for further appeal.

7.14 Mileage Reimbursement

Each employee of the City who is authorized or required by the City Manager or designee to use the employee's private automobile in the performance of the duties of the employee's position, shall be entitled to receive and shall be paid as a travel allowance for such use of his/her private automobile a "mileage reimbursement rate" consistent with the City's rate.

7.15 Bilingual Pay (Full-Time and Part-Time Benefited Employees)

7.15.1 An employee must meet at least one of the following eligibility requirements and must be certified as bilingual for oral communication, written translation or sign language duties according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the Union.

1. The employee is currently assigned to a position selectively certified based on bilingual ability by the Director of Employee Services or designee
- or
2. The duties currently assigned and currently being performed by an employee have been designated by the Department Director or

designee as requiring utilization of a non-English language on a regular basis.

7.15.2 Each full-time employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of twenty-nine dollars (\$29) per biweekly pay period and for performing written translation duties at the rate of forty dollars (\$40) per biweekly pay period for each pay period actually worked.

7.15.3 Each part-time benefited employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of nineteen dollars (\$19) per biweekly pay period and for performing written translation duties at the rate of thirty dollars (\$30) per biweekly pay period for each pay period actually worked.

7.15.4 If an eligible employee is on paid leave for a period of one (1) full pay period or more, the employee will not receive bilingual pay for that period.

7.15.5 If an employee is denied bilingual pay under the requirements set forth in this article, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Employee Services. The written decision of the Director of Employee Services shall be final, with no process for further appeal.

7.16 Life Insurance

The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee. For employees on reduced schedules, the City's contribution for premiums will be provided in accordance with Article 31.

7.17 Auto Liability Insurance

No employee shall be required, as a condition of employment, or continued employment, to maintain automobile liability insurance in excess of the minimum required by the State of California.

7.18 Shorthand Differential Pay

7.18.1 Effective September 25, 2005, no additional employees will be eligible for shorthand differential pay. Any employee who was receiving shorthand differential pay as of September 24, 2005, shall continue to receive shorthand differential pay until eligibility ceases. A full-time employee in a classification for which skill in taking shorthand dictation may be required who meets the eligibility requirements set forth herein shall be compensated at the rate of twenty-five dollars (\$25) per biweekly pay period for each pay period actually worked. Eligibility requirements are:

7.18.1.1 The employee has been approved by the Director of Employee Services for selective certification based on ability to take shorthand dictation and is or was selectively certified for a position which has

been verified by the Department Director as requiring shorthand and is currently assigned to such position, or

7.18.1.2 The duties currently assigned to and currently being performed by an employee in such classification require utilization of shorthand on a regular basis, as verified by the Department Director.

7.18.2 Such employee must be certified as proficient in taking shorthand dictation at the speed and accuracy designated appropriate to the classification for which the skill is required according to the current established procedure. If the employee was shorthand certified when hired and meets either of the eligibility criteria above he/she will be considered eligible.

7.19 Notary Services

Employees commissioned by the Secretary of State for the State of California to perform notary services and who are directed to perform notary services on behalf of the City of San Jose, shall be compensated at the rate of twenty-five dollars (\$25) for each bi-weekly pay period in which the employee performs notary services. Effective the first pay period of payroll calendar year 2008, employees commissioned by the Secretary of State for the State of California to perform notary services and who are directed to perform notary services on behalf of the City of San Jose, shall be compensated at the rate of twenty-five dollars (\$25) for each bi-weekly pay period, subject to Departmental approval.

7.20 Employee Assistance Program (EAP)

7.20.1 During the term of this agreement, the City will continue to provide an Employee Assistance Program at the level of benefit provided on the effective date of this agreement.

7.20.2 Mandatory Referrals to EAP. If deemed desirable for job-related reasons, a supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP). The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary. Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

7.21 Substance Abuse Treatment Program

Full-time employees are eligible for substance abuse treatment benefits and are subject to the terms and conditions of the negotiated Confidential Employees' Substance Abuse Policy (Exhibit IV).

7.22 Dependent Care Assistance Program

During the term of this Agreement, the City will continue to provide a Dependent Care Assistance Program at the level of benefit provided on the effective date of this Agreement.

7.23 Definition of the Market

- 7.23.1 Comparable classification in cities and counties in Santa Clara, San Mateo, Contra Costa, San Francisco and Alameda Counties serving populations of 100,000 or more will be used to compare classifications. Population figures will be used from the U.S. Census Bureau.
- 7.23.2 Compensation information from the private sector will be gathered from existing published sources, and used to supplement public sector data as deemed appropriate.
- 7.23.3 Based on the April 1, 2000, US Census Bureau, 2000 Census of Population, the following agencies currently meet the definition of the market.

Alameda County	Berkeley
Concord	Contra Costa County
Daly City	Fremont
Hayward	Oakland
San Francisco City/County	San Mateo County
Santa Clara	Santa Clara County
Sunnyvale	

ARTICLE 8 DUES AND AGENCY FEE DEDUCTIONS

- 8.1 The City will deduct from the pay of each employee covered by this Agreement, while such employee is assigned to a classification included in a representation unit represented by the Employee Organization, dues uniformly required as a condition of membership, pursuant to the Employee Organization's constitution and by-laws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer.
- 8.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer from time to time by the designated Officer of the Employee Organization as regular monthly dues.
- 8.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated Officer of the Employee Organization the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Employee Organization not later than twenty-one (21) days following the pay period in which the deductions were made.
- 8.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 8.5 If, through inadvertence or error, the City fails to make the authorized deduction or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.

- 8.6 It is expressly understood and agreed that the Employee Organization will refund to the employee any Employee Organization dues erroneously withheld from an employee's wages by the City and paid to the Employee Organization. In the event the Employee Organization fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Employee Organization.
- 8.7 The Employee Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.
- 8.8 Agency Fee. The City and the Union recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.
- 8.8.1 Accordingly, membership in the Union shall not be compulsory. An employee has the right to choose either; to become a member of the Union; or, to pay to the Union a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 8.8.7 below.
- 8.8.2 Employee's Obligation to Exclusive Representation. An employee who is member of the Union on September 25, 2005 and any employee who becomes a member after September 25, 2005 shall maintain such membership, except as provided during the change of status period set forth in Section 8.8.3.2 below.
- 8.8.3 Any person in a classification represented by the Union must, within thirty (30) days after their employment, submit to the City either:
1. A signed authorization to deduct dues as a member of the Union; or
 2. A signed affidavit that the employee qualifies for an exemption as set forth in Section 8.8.6 below. In this case, the employee must designate a charity from Section 8.8.6.1 to which the appropriate amount will be paid through payroll deduction.
- 8.8.3.1 If a person fails to make any of the designations set forth above within the thirty (30)- day period, the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30)- day period. The City and the Union agree that the Agency shop fee shall be paid in exchange for representation services necessarily performed by the Union in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the Union.
- 8.8.3.2 During the period August 21 through and including September 20, 2008, any employee who is a member of the Union may, by written notice to the Municipal Employee Relations Officer, or designee, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this Article.

- 8.8.3.3 The parties expressly agree that the authority granted the Municipal Employee Relations Officer, or designee, under the Concerted Activity Article of this contract, to cancel payroll deductions in the event of a concerted activity extends to the cancellation of Agency Fee and dues deductions.
- 8.8.3.4 The Union specifically agrees that the provisions of Section 8.8.7 of this Article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of an Agency Fee.
- 8.8.4 Definition of Agency Fee. The Agency Fee collected from non-member bargaining unit employees pursuant to Section 8.8.2 of this Agreement shall be limited to the Union (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer, or designee, from time-to-time by the designated officer of the Union as the Agency Fee.
- 8.8.4.1 The Union certifies that this "representation fee" includes only those costs actually incurred by the Union in representing employees, who are not also members of the Union, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: Union fines, back dues, initiation fees, or any other charge required as a condition of Union membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities, any and all amounts which do not constitute costs actually incurred by the Union in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union specifically agrees that the provisions of Section 8.8.7 of this Article apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.
- 8.8.5 Annual Verification of Agency Fee by Union. The Union shall submit to the City a detailed written financial report of its financial transactions in the form of a balance sheet and an operating statement, certified as to accuracy by the Union's Treasurer. Each year such reports shall be verified and submitted in writing to the City by the Union within sixty (60) days of July 1.
- 8.8.6 Employees Exempted From Obligation to Pay Union.
Any employee shall be exempted from the requirements of Section 8.8.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.

8.8.6.1 Such exempt employee shall, as an alternative to payment of an Agency Fee to the Union, pay an amount equivalent to such Agency Fee to either:

a. The United Way; or,

b. Combined Health Appeal (C.H.A.); or,

c. Any charity jointly agreed upon by the City and the Union. Such charities cannot be affiliated in any manner with the Union, nor can such charity be related to an established religious organization.

8.8.7 Hold Harmless. The Union shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to Agency Fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

8.8.8 Expiration Date of Agency Fee Provisions. It is agreed and understood by the parties to this Agreement that the provisions, rights and obligations herein pertaining to payment of any Agency Fee and dues deduction shall not survive beyond the term of this Agreement, and shall accordingly expire on September 20, 2008. As such, the City will no longer collect or transmit dues to the Confidential Employees' Organization beyond the date of expiration of this agreement. However, pursuant to Government Code Section 3502.5, this Article 8, section 8 may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least 30% of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

ARTICLE 9 MANAGEMENT RIGHTS

9.1 Except to the extent that the rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers, and authority granted to it or which it has pursuant to any law or the City Charter, including, but not limited to: The right to direct the work force; increase, decrease or re-assign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.

9.2 The City has the sole and absolute right to determine the nature and type of, assign, re-assign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without

consultation or meeting and conferring with the employees affected or the Confidential Employees' Organization AFSCME, Local 101, AFL-CIO, representing such employee.

ARTICLE 10 CONCERTED ACTIVITY

10.1 It is understood and agreed that:

10.1.1 Participation by any employee represented by the Employee Organization in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for employees in this unit, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work, shall subject the employee to disciplinary action up to and including discharge.

10.1.2 If the Employee Organization, its officers or its authorized representatives violates provision 10.1.1 above or tolerate the violation of provision 10.1.1 above and after notice to responsible officers or business representatives of the Employee Organization, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 10.1.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Employee Organization shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Employee Organization and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Employee Organization, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer shall not be subject to review under the provisions of Article 12, Grievance Procedure.

ARTICLE 11 SAFETY

11.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Employee Organization agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.

11.2 An employee who believes his/her work assignment is unsafe and for that reason refuses to perform such assignment shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Employee Organization representative.

11.3 The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safety of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time

lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, he/she shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety of the safety or lack of safety of the work assignment shall not be subject to the grievance procedure.

- 11.4 Upon request of either the employee or the representative of the Department of Industrial Safety, the appropriate Employee Organization representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee or the appropriate Employee Organization representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.
- 11.5 As used herein, the term "City Safety Officer" shall include any person designated to act as such.

ARTICLE 12 GRIEVANCE PROCEDURE

- 12.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Employee Organization, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Employee Organization may file a grievance on behalf of such employee(s).
- 12.2 Grievances involving the interpretation or application of Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with the applicable provisions of the resolution.
- 12.3 **STEP I**
 - 12.3.1 An employee may present the grievance orally either directly or through the Employee Organization representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.
 - 12.3.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

12.4 STEP II

12.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director, or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

12.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

12.4.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Employee Organization representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

12.4.4 If the employee is not satisfied with the decision he/she may appeal the grievance to Step III.

12.5 STEP III

12.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer within five (5) working days following receipt of the written decision at Step II.

12.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Employee Organization representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within five (5) working days following the meeting.

12.5.3 If the decision of the Municipal Employee Relations Officer is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV – Arbitration.

12.6 STEP IV – ARBITRATION

12.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Employee Organization representative may appeal the grievance to Arbitration. The appropriate Employee Organization representative shall notify the Municipal Employee Relations Officer in writing, within fourteen (14) working days following receipt by the employee of the written answer at Step III.

- 12.6.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Employee Organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.
- 12.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 12.6.4 The parties shall meet at least ten (10) working days prior to the arbitration hearing date for the purpose of pre-arbitration settlement or narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing
- 12.6.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.
- 12.6.6 The decision shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Employee Organization.
- 12.6.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.
- 12.6.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.
- 12.6.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

12.7 Release Time

- 12.7.1 The Employee Organization President and/or a designated representative shall be authorized release time to appear at Civil Service Commission or City Council

meetings when such bodies are considering matters affecting the Employee Organization, to attend Federated Retirement Board meetings, and to attend meetings to which he/she is called by the City Administration regarding matters affecting the Employee Organization, so long as this participation does not result in overtime to perform their usual and customary duties. Participation at such meetings should be in lieu of usual and customary duties and will not result in overtime compensation.

12.7.2 Employees will be granted release time in order to donate blood at City sponsored blood drives. Employees will be granted two (2) hours of release time per calendar quarter to donate platelets.

12.8 Stewards

12.8.1 Stewards shall be designated in the ratio of approximately one (1) steward for every fifty (50) employees in the representation unit. It is recognized that shift and geographical locations may require an adjustment to the above ratio.

12.8.2 The Employee Organization agrees that it shall certify as Stewards only full-time employees who have satisfactorily completed an initial probationary period during the employee's current term of employment.

12.8.2.1 A Steward shall function under the terms of the grievance procedure and only on the shift and in the department(s) or sections of a department(s) for which he/she has been certified. Exceptions to this paragraph may be made by mutual agreement of the parties. Should a Steward be required to leave his/her assigned duties to investigate and/or process a grievance, he/she shall secure the permission of his/her immediate supervisor and inform the supervisor of the general nature of the grievance, and report back to the supervisor upon returning to his/her assigned duties. Permission for a Steward to leave his/her assigned duties shall not be unreasonably withheld. In the event it is necessary for a Steward to handle a grievance in a department other than the department to which he/she is regularly assigned, the Steward shall report to the immediate supervisor of the aggrieved employee, the employee involved in the grievance, or the function being investigated.

12.8.2.2 In the event the parties agree that a Steward or other representative of the Employee Organization is permitted to investigate and/or process a grievance other than as provided in 12.8.2.1 above, such representative shall continue to investigate and/or process the grievance, even if the department or section of a department in which the grievance arose is subsequently assigned to another representative.

12.8.3 Although the grievances may be investigated and/or processed during normally scheduled working hours, the Employee Organization agrees that the time spent by its designated representatives shall be kept to a minimum and that no Employee Organization representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Employee

Organization also agrees it will not process grievances during periods of overtime.

12.8.4 The Employee Organization agrees to properly notify the Municipal Employee Relations Officer of any changes of employees designated as Stewards.

12.8.5 The parties agree that they have a mutual interest in well-trained Stewards. Toward this end, certified Stewards shall be granted a maximum of eight (8) hours paid release time during each year of this agreement to participate in training sessions related to the provisions of this agreement, jointly conducted by Employee Organization and City representatives, according to an outline of such training activities to be submitted by the Employee Organization and approved by the City prior to the conduct of any such training sessions.

12.9 General Provisions

12.9.1 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, except for appeals to Step IV, or the appropriate Employee Organization representative may appeal the grievance to the next higher step within the time limits provided.

12.9.2 The Employee Organization agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.

12.9.3 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Employee Organization representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.

12.9.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 13, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.

12.9.5 Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.

12.10 Department Labor Management Committees

12.10.1 Purpose:

To serve as an advisory committee to Management and to facilitate positive union-management relations. These collaborative efforts between labor and management have proven successful in the past and are encouraged when appropriate.

12.10.2 Structure:

A Labor Management Committee may be established in a department by mutual agreement. Management and labor each selects an equal number of committee representatives. By mutual consent of the parties the number of committee members may be modified. This forum will be conducted on a consensus basis. The Labor Management Committee will set up meetings on an ad hoc basis as determined by the parties. If all parties are in agreement, a joint department labor management committee may be established to include, or join with, other bargaining units.

12.10.3 Authority:

Training and guidelines will be provided by the Office of Employee Relations. The Labor Management Committee is not authorized to meet and confer to create contractual obligations nor to change the MOA to authorize any practice in conflict with existing contracts or rules. The Office of Employee Relations and CEO President or Business Agent will be involved in a Labor Management Committee meeting upon request. As appropriate the Labor Management Committee shall keep both parties informed of their discussions and any written material they generate. This process is not designed for individual grievances, disciplines, or to replace the Steward system.

ARTICLE 13 LEAVES OF ABSENCE

13.1 All requests for leaves of absence without pay shall be made in writing. The appointing authority, or his/her designated representative, may grant an employee a leave of absence without pay for good and sufficient reason, not to exceed twelve (12) months. Such leaves may, however, be extended, not to exceed an additional six (6) months, upon written request of the employee, subject to approval of the appointing authority, or his/her designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.

13.1.1 Appointing authority may grant leaves of absence without pay for an employee to work on union business. Such leaves are subject to all of the provisions in the article.

13.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Employee Services Department or such other address as the employee may designate. Such notice shall be by registered mail, return receipt requested and shall be mailed not later than thirty (30) days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled work day after the effective date of the cancellation, or on the first scheduled work day following the expiration of a leave, shall be considered a voluntary resignation, unless the failure to return is due to extenuating circumstances beyond the control of the employee. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to a position in the department within the classification held by the employee at the time the leave commenced.

13.3 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave

of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.

- 13.4 The employee is responsible for coordinating the return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the supervisor to ensure that all necessary documents have been completed and steps taken.
- 13.5 For purposes of this Article, seniority shall be defined in accordance with Subsection 14.4.1 of Article 14, entitled Layoff.
- 13.6 Any employee who is absent without notification to his/her Department Director, or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary resignation, unless the failure to report is due to extenuating circumstances beyond the control of the employee.
- 13.7 Employees who have been separated from City service for failure to return from leave, or failure to report, and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.

ARTICLE 14 LAYOFF

14.1 Order of Layoff

When one (1) or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

14.1.1 Provisional employees in the order to be determined by the appointing authority.

14.1.2 Probationary employees in the order to be determined by the appointing authority.

14.1.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

14.1.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

14.2 Notice of Layoff

Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate Employee Organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

14.3 Reassignment in Lieu of Layoff

In the event of layoff, any employee so affected may elect to:

- 14.3.1 Accept a position in a lateral or lower class in which he/she has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 14.3.2 Accept a vacant position in a lateral or lower class for which he/she has the necessary education, experience, and training as determined by the Director of Employee Services. An employee may also accept a vacant position in a higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during his/her most recent period of employment. Adverse decisions of the Director regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.
- 14.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.

14.4 As used in this Article, the following words and phrases shall be defined as follows:

- 14.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained, but shall not accrue, during any period of leave without pay, except for authorized military leave.
- 14.4.2 A lower class shall mean a class with a lower salary range.
- 14.4.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 14.4.4 A position in a higher class shall mean a position in a class with a higher salary range.

14.5 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.

14.6 Layoff Reinstatement Eligible List

- 14.6.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Part 14.3 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected

class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List, unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.

- 14.6.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 14.6.3 Any person who is reinstated to a class which is the highest class to which he/she would have been entitled at the time of the layoff shall have his/her name removed from the Reinstatement Eligible List.
- 14.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three (3) year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director, be returned to the Reinstatement Eligible List.
- 14.6.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to his/her layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

ARTICLE 15 BULLETIN BOARDS

- 15.1 Recognized employee organizations may use designated portions of City bulletin boards in departments which have employees in the representation units for which the Employee Organization is recognized.
- 15.2 Subject to the provisions contained herein, the following types of Employee Organization notices and announcements listed below may be posted on the bulletin boards:
 - 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Employee Organization and the Municipal Employee Relations Officer.
- 15.3 All material shall identify the Employee Organization responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer who shall have the sole and exclusive right to order the removal of any objectionable material.

- 15.4 The Municipal Employee Relations Officer shall notify the Employee Organization of any material ordered removed. The Employee Organization shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 15.6 Failure of the Employee Organization to abide by the provisions of this Article shall result in the forfeiture of the Employee Organization's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 16 HOLIDAYS

- 16.1 Except as hereinafter otherwise provided, each full-time employee shall be entitled to paid holiday leave on each of the following holidays as observed, and on no other day, during the term of this Agreement:
- | | |
|------------------------|------------------------|
| 16.1.1 New Years Day | Columbus Day |
| Martin Luther King Day | Veterans Day |
| President's Day | Thanksgiving Day |
| Cesar Chavez Day | Day after Thanksgiving |
| Memorial Day | Christmas Eve |
| Independence Day | Christmas Day |
| Labor Day | New Year's Eve Day |
- 16.1.2 When one of the above holidays falls on a Sunday, the following day shall be designated as the holiday; and when one of the above holidays falls on a Saturday, the preceding day shall be designated as the holiday.
- 16.1.3 Any other day proclaimed or designated by the Council of the City of San Jose as a holiday for which full-time employees will be entitled to holiday leave. Should additional holidays be provided, or should an existing holiday be traded for a different holiday observance for other represented employees on a Citywide basis, such holidays shall apply to employees in this unit.
- 16.2 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, the head of any department of the City government may specify the days of the week and the hours of such days when any such employee in his/her department or under his/her jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any of said holidays shall receive the salary that he/she would be entitled to for that day at his/her regular rate of pay, and in addition thereto, he shall receive compensatory time off duty equal to one and one-half (1-1/2) times the number of hours which he/she works on said holiday.
- 16.3 Said compensatory time off duty shall be credited to such employee in accordance with Article 6 of this Agreement; provided, however, that upon written request by the employee to the Department Director, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to his/her regular pay for such holiday and in lieu of such

compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him/her multiplied by the employee's equivalent hourly rate.

- 16.4 If any of said holidays falls on a full-time employee's regular day off, during which he/she is not required to work, such employee shall be entitled to eight (8) hours of compensatory time off duty for full day holidays and four (4) hours of compensatory time off duty for half day holidays. Said compensatory time off duty shall be credited to such employee in accordance with Article 6 provided, however, that upon written request by the employee to the Department Director or designee, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him/her multiplied by the employee's equivalent hourly rate.
- 16.5 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose, or other applicable law, and not in addition thereto.
- 16.6 Holiday Closure. The City Manager may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off, however, it shall not be a requirement.

Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees who take lost time during the closure shall continue to receive the following accruals: vacation, sick leave, city-wide and department seniority.

Eligible employees who have been employed with the City for less than thirteen (13) biweekly pay periods, may use available vacation leave during the closure.

ARTICLE 17 VACATION AND PERSONAL LEAVE

- 17.1 Each eligible full-time employee, who has been employed as such for at least thirteen (13) biweekly pay periods, shall be granted vacation leave with pay in accordance with the following:

<u>Years of Service</u>	<u>Hours of Vacation per 26 Pay Period Cycle</u>
First 5 years	80 hours
6th year – 10th year	120 hours
11th year – 12th year	136 hours
13th year – 14th year	152 hours
15th year or more	168 hours

Employees' accrual rate will change on the first pay period of the payroll calendar year in which they reach the designated years of service.

17.1.1 Carry-Over of Vacation Leave

An employee may carry over to the next subsequent cycle of twenty-six (26) biweekly pay periods, not more than 200 hours or his/her maximum allowable accrual in the previous cycle, whichever is less, of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. An employee carrying-over greater than the maximum allowable vacation hours shall have the excess amount deducted from the following year's accrual unless approved in advance by the Office of Employee Relations. This carryover process shall expire at the end of 2006.

Effective the first pay period of payroll calendar year 2007, employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount. Each employee's current vacation balance is shown on the employee's pay check stub and it is the responsibility of the employee to track for compliance with this provision.

Effective the first pay period of payroll calendar year 2007, any employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.

17.1.2 Reimbursement for Unearned Vacation Leave

If the employment of any full-time employee should cease, and if he/she should have taken more vacation leave than he/she had accrued at the time of termination of his/her employment, there shall be deducted from his/her final pay, or he/she shall refund to the City such pay as he/she shall have received for vacation leave theretofore taken by him/her. The provisions of this Subsection 17.1.1 shall not apply to any full-time employee whose employment by the City is terminated by reason of the employee's death, or his/her entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration. This Section, Section 17.1.2, shall not be in effect after the first pay period of payroll calendar year 2007.

17.1.3 Payment for Unused Accrued Vacation Leave upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for any vacation leave which he/she may then have accrued and not used.

17.2 Vacation Pay

If, in the judgment of the City Manager it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, he/she may authorize such work. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to his/her regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, he/she may elect, in writing, filed with the Director of Employee

Services to carry over such leave to the subsequent cycle of twenty-six (26) biweekly pay periods.

17.3 Vacation Leave

Use of accrued vacation or personal leave is subject to the advance approval of the Department Director or designee. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless he/she elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be determined by the relative length of time served by each employee in the classification in which he/she is employed in a department of the City Government and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employee in such classification. Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten working days of the receipt of the written requests. Nothing in this section shall interfere with an established vacation scheduling procedure.

17.4 Computation of Vacation Leave

For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time-off, or any other paid leave, shall be deemed to be "time worked." Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility, provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation during the first thirteen (13) pay periods of employment, even though such employee may, upon satisfactory completion of the initial probationary period, be entitled to additional vacation pursuant to the above.

17.5 Personal Leave

Effective the first pay period of each payroll year, each full time employee shall be entitled to a maximum of sixteen (16) hours of personal leave. Effective the first pay period of payroll calendar year 2007, each full-time employee shall be entitled to a total of twenty-four (24) hours per payroll calendar year. Such leave may be scheduled in fifteen (15) minute increments, at any time, subject to approval of the supervisor. Personal Leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees, shall not be paid out nor carried over to subsequent years.

17.5.1 Employees hired on or after July 1st shall be entitled to only eight (8) hours of personal leave in the first payroll calendar year of employment. Effective the first pay period of payroll calendar year 2007, full-time employees hired on or after July 1st shall be entitled to only twelve (12) hours in the payroll calendar year in which they were hired.

- 17.5.2 Each benefited part-time employee shall be entitled to annual personal leave of eight (8) hours per year except that, in the first payroll calendar year of employment, employees hired before July 1st will get eight (8) hours of annual personal leave and employees hired on or after July 1st will get four (4) hours of annual personal leave. Effective the first pay period of payroll calendar year 2007, each benefited part-time employee shall be entitled to annual personal leave of twelve (12) hours per year except that in the first payroll calendar year of employment, employees hired before July 1st will get twelve (12) hours of annual personal leave and employees hired on or after July 1st will get six (6) hours of annual personal leave.

ARTICLE 18 SICK LEAVE

- 18.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

18.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Paid leave for holidays, vacation, disability, compensatory time off, or other paid leave shall be considered time worked for purposes of this section.

18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments, or for the care related to the illness or injury of the employee's child, mother, father, spouse or domestic partner registered with the Department of Employee Services.

Up to a total of forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother or stepchild.

18.1.2.1 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Article 19 Disability Leave, or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Employee Services or designated representative, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.

18.1.2.2 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.

18.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in fifteen minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.

18.1.2.4 Accrued sick leave also may be used in accordance with Article 30, Catastrophic Illness.

18.1.3 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician.

If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

18.1.4 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he or she, or someone on his or her behalf notifies his or her immediate superior or Department Director, or the Director of Employee Services, of his or her intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Manager may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.

18.1.5 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.

18.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for a maximum of eighteen (18) consecutive months or for eighteen (18) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service. Notwithstanding the foregoing, in no event shall an employee be entitled to a leave of absence without pay for a period in excess of twelve (12) cumulative months or for twelve (12) consecutive months in any period of twenty-four (24) consecutive months and shall be separated from City service.

18.1.6.1 Pursuant to Article 13, an employee who is not otherwise entitled to any additional unpaid sick leave may request a leave of absence without pay, subject to approval of the appointing authority or designee.

18.2 Sick Leave Payoff

Sick leave payoff shall be given to each full-time and part-time employee who is a member of the Federated Retirement System at the time of retirement or death under one of the following conditions:

18.2.1 Federated Retirement System:

The employee is:

- 18.2.1.1 a member of the Federated Retirement System, and
- 18.2.1.2 retired under the provisions cited in the system, and
- 18.2.1.3 credited with at least fifteen (15) years of service in this retirement system, or
- 18.2.1.4 credited with at least ten (10) years of service prior to a disability retirement

18.2.2 Terminated Employee with Vesting Rights:

The employee has:

- 18.2.2.1 terminated his/her service with the City, and
- 18.2.2.2 retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and
- 18.2.2.3 following such termination, qualifies for retirement and retires under the provisions cited in the code and
- 18.2.2.4 has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.2.3 Death During Service:

The estate of any full-time or eligible part-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan;

18.2.4 Death of Terminated Employee:

The estate of any full-time or eligible part-time employee who:

- 18.2.4.1 had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and
- 18.2.4.2 dies prior to becoming eligible for retirement allowances as cited under provisions of the San Jose Municipal Code, and

18.2.4.3 has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.3 Payout shall be determined as follows:

18.3.1 If a full-time or eligible part-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specified percent of his/her hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death.

18.3.2 Less than 400 hours: Hours accumulated x 50% of final hourly rate
or 400 - 799 hours: Hours accumulated x 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated x 75% of final hourly rate.

18.4 Use of previously accumulated sick leave hours:

For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time or eligible part-time employee at the time of his/her retirement or death, unused sick leave from prior periods of employment with the City shall be used. Previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement

Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.

19.2 Eligibility for Disability Leave Supplement

A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division I or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.

19.2.1 After the initial three (3)-day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Worker's Compensation Section. In no event may DLS exceed the limit specified in 19.6.

19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability

If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD)

compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one year.

19.4 Ineligible Causes for Disability Leave

An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:

- 1) an act of gross negligence of such employee
- 2) any work voluntarily undertaken by employee from which he has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

19.5 Ineligibility if Offer and Decline of Modified Duty

DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he or she is physically qualified.

19.6 Maximum Term of Disability Leave Supplement

The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which he or she is disabled for one of the following time periods, whichever is shortest:

- 1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three-day waiting period.
- 2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
- 3) Nine (9) calendar months (274 days or 1,560 hours if not continually absent) following the date of injury.

19.6.1 Time Limit for DLS Eligibility

After 1,560 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which he or she is claiming DLS.

19.7 Disability Leave Supplement is in Lieu of Regular Compensation

Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.

19.8 Requirement of Evidence Proving Temporary Disability

The Director of Employee Services or designee is responsible for determining eligibility for DLS. In making this determination, the Director or designee may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and

proof of other relevant matters as determined by the Director or designee. The Director or designee may require the employee to submit to a medical examination by a physician selected by the City.

19.9 Termination of Disability Leave

An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Article 18.1.2.3, and of accrued vacation, and compensatory time off, with Workers' Compensation may be separated from City service. In making this determination, the City shall consider the employee's anticipated date of return to work and the operational impact of the extended absence.

ARTICLE 20 MAINTENANCE OF MEMBERSHIP

- 20.1 Except as otherwise provided herein, each employee who, on September 25, 2005, is a member in good standing of the Employee Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Employee Organization as a condition of retaining membership.
- 20.2 Any employee who, on September 25, 2005, is not a member of the Employee Organization, or any person who becomes an employee after September 25, 2005, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Employee Organization shall thereafter maintain such membership for the duration of the Agreement, except as otherwise provided herein.
- 20.3 Any employee who is presently a member of the Confidential Employees' Organization or who subsequently becomes a member during the extent of this contract may resign from such membership only during the period of August 21 through September 20, 2008. Employees shall not be required to join the Employee Organization as a condition of employment. Resignation shall be in writing to the City's Municipal Employee Relations Officer with a copy to the Employee Organization.
- 20.4 The Employee Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.

ARTICLE 21 SEPARABILITY

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 22 BEREAVEMENT LEAVE

22.1 Each full-time employee shall be granted bereavement leave with full pay for up to forty (40) work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within fourteen (14) calendar days following the death of an eligible person. Under extreme circumstances, the fourteen- (14) day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal:

- a) Parents/Step-parents
- b) Spouse
- c) Child/Step-child
- d) Brother/Sister; Step-brother/sister; Half-brother/sister
- e) Grandparents/Step-grandparents
- f) Great grandparents/Step-great grandparents
- g) Grandchildren
- h) Domestic Partner
- i) Sister in-law/Brother in-law/Daughter in-law/Son in-law

22.1.1 A domestic partner, as referenced in Section 22.1, must be the domestic partner registered with the Department of Employee Services.

22.2 No eligible employee shall be granted Bereavement leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such bereavement leave is required.

ARTICLE 23 NON-DISCRIMINATION

23.1 The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition or handicap. The parties further agree that this Section 23.1 shall not be subject to the Grievance Procedure provided in this Agreement.

23.2 The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Employee Organization, or because of any authorized activity on behalf of the Employee Organization. The parties further agree that this Section 23.2 may be subject to the Grievance Procedure provided in the Agreement.

ARTICLE 24 SUPPLEMENTAL BENEFITS FOR PART-TIME EMPLOYEES

24.1 Any other provisions of this Agreement to the contrary notwithstanding, except as provided in Article 7, part-time employees "indefinitely assigned" to "regularly scheduled part-time positions," as said terms are hereinafter defined shall be eligible for and shall be granted the following supplemental benefits, to-wit:

24.2 Vacation Leave

24.2.1 During the term of this Agreement, and subject to the same restrictions, conditions, and limitations applicable to full-time employees as provided in this Agreement, except as otherwise hereinafter provided, eligible part-time employees shall accrue and be granted leave of absence with full pay for vacation purposes on the following basis:

24.2.1.1 During his/her first 10,400 hours of employment in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.03875 of vacation leave for each hour worked, exclusive of overtime.

24.2.1.2 During his/her first 10,400 hours following his/her first 10,400 in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.05875 hour of vacation leave for each hour worked, exclusive of overtime.

24.2.1.3 During his/her first 4,160 hours following his/her first 20,800, in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.06625 hour of vacation leave for each hour worked, exclusive of overtime.

24.2.1.4 During his/her first 4,160 hours following his/her first 24,960 in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.07375 hour of vacation leave for each hour worked, exclusive of overtime.

24.2.1.5 During each hour following completion of 29,120 hours of employment, in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.08125 hour of vacation leave for each hour worked, exclusive of overtime.

24.2.2 Carry over vacation shall be limited to 120 hours or his/her maximum allowable accrual in the previous cycle, whichever is less. Effective the first pay period of payroll calendar year 2007, all part-time employees' maximum vacation accrual amount shall be 120 hours. Any employee who is at the maximum vacation amount of 120 hours, shall cease from accruing vacation until such time when employee uses enough vacation so that they are below their maximum vacation amount of 120 hours.

24.2.3 Vacation leave may be taken only after completion of 1,040 hours of employment and in an amount equal to but not more than the amount of vacation accrued.

24.2.4 Any such part-time employee shall be entitled to paid vacation leave only for those days and number of hours he/she is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to the Article.

24.2.4.1 No eligible part-time employee shall be entitled to vacation leave with pay for any day or portion of a day during which the employee is absent, if in fact the employee is not assigned to work or would not have been required to work on that day or portion of that day,

notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

24.3 Sick Leave With Pay

24.3.1 During the term of this Agreement, sick leave with pay shall be granted to eligible part-time employees in the amount of 0.04616 hour of sick leave for each hour worked, exclusive of overtime, and shall be subject to the same restrictions, conditions and limitations as are applicable to paid sick leave for full-time employees.

24.3.2 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours he/she is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

24.3.3 No eligible part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact, the employee is not assigned to work or would not have been required to work on that day or portion of that day, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

24.4 Holiday Benefits

24.4.1 Holiday leave with pay and compensation for time worked on a holiday shall be granted to eligible part-time employees on the same basis and subject to the same restrictions, conditions and limitations as apply to such leave with pay and such compensation for full-time employees; provided, however, that each eligible part-time employee shall be entitled to holiday leave with pay for a number of hours each holiday based on the number of hours per week such part-time employee is indefinitely assigned to work in his/her regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week scheduling:

<u>Regularly scheduled hours per week</u>	<u>Hours of leave with pay each holiday</u>
20-24 hours	4 hours
25-29 hours	5 hours
30-34 hours	6 hours

24.4.2 Compensation for holidays shall be according to the above schedule regardless of the number of hours any eligible part-time employee may have been scheduled to work or would have been required to work on any designated holiday. If full-time employees are granted holiday leave with pay for a period of four (4) hours on a day that would be a regularly scheduled, full work day were it not for the holiday, eligible part-time employees shall receive holiday leave with pay in an amount equal to one half (1/2) of the hours shown above.

24.4.3 Each part-time employee who is not eligible to receive supplemental benefits provided by this Article and who is required to work on any of said holidays shall receive the salary that he/she would be entitled to for the hours worked on that day at his/her regular rate of pay, and in addition thereto, he/she shall receive

compensation in a sum equal to one-half times his/her regular hourly pay multiplied by the number of hours worked by him/her on such holiday, provided and excepting, however, that no part-time employee who is required to work on any of said holidays and who received a flat daily rate of pay, plus room and board shall be entitled to or shall be paid any compensation in addition to his/her regular flat daily rate of pay plus room and board.

24.5 Health and Dental Insurance Benefits

During the term of this Agreement, the City shall pay for each eligible part-time employee who is a subscriber to benefits provided for individual coverage, or for individual coverage plus coverage of dependents, under one of the health and dental insurance plans provided for full-time employees, sums of money equal to the percentage of the City's contribution for full-time employees for such individual coverage, or individual plus coverage of dependents, based on the number of hours per week such part-time employee is indefinitely assigned to work in his/her regularly scheduled part-time position. Such sums of moneys shall be determined in accordance with the following such hours per week and percentages:

<u>Regularly Scheduled Hours per Week</u>	<u>City Contribution for P/T Employees as Percentage of City Contribution for Full-Time Employees</u>
20-24 hours	50.0%
25-29 hours	62.5%
30-34 hours	75.0%

24.6 Shift Differential

- 24.6.1 A swing shift differential of one dollar and fifty cents (\$1.50) an hour shall be paid to employees for each regularly scheduled hour worked after 2:00 p.m. if at least four (4) hours of a regularly assigned scheduled or continuous work hours are worked after 5:00 p.m.
- 24.6.2 A night shift differential of one dollar and seventy-five cents (\$1.75) per hour shall be paid to employees for each regularly scheduled hour worked after 11:00 p.m. and prior to 8:00 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 11:00 p.m. and before 8:00 a.m.
- 24.6.3 Shift differential shall be paid to an employee for the hours worked when assigned to cover another employee's temporary absence and when the absent employee would have otherwise qualified for shift differential as defined above.
- 24.6.4 Paid leave time does not qualify for payment of shift differential except when an employee uses a minimum of forty (40) consecutive hours of vacation, compensatory time or personal leave. The employee will continue to be paid shift differential as though they had worked their assigned shift during the period of vacation. City observed holiday hours may be credited towards meeting the forty (40) consecutive vacation hours requirement, however, holiday leave hours do not qualify for payment of shift differential.

24.6.5 Except as otherwise required by State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

24.7 Educational and Professional Incentives

The City will reimburse each eligible benefited employee 100% of expenses incurred, up to the maximum amounts per fiscal year listed below. Eligible expenses shall be limited to registration, tuition, fees and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. Section 5.01 of the City Policy Manual outlines additional details of the program. The maximum amounts for eligible benefited employees are based on the employee's established benefit category as follows:

Benefit Category (scheduled hours)	Maximum Reimbursement
20-24 hours	\$ 500.00
25-29 hours	\$ 625.00
30-34 hours	\$ 750.00

24.8 Eligible Employee

24.8.1 As used in this Agreement, the term "regularly scheduled part-time position" shall mean a position within a department designated by the department in writing as requiring at least twenty (20) hours and not more than thirty-four (34) hours of regularly scheduled work per week on a year round basis for an indefinite period of time.

24.8.2 Designations made pursuant to the foregoing may be made or rescinded at any time at the discretion of the City Manager, or the Department with the approval of the City Manager.

24.8.3. As used in this Agreement, the term "indefinitely assigned" shall mean an assignment to a regularly scheduled part-time position without limitation of any kind as to duration. Nothing herein contained, however, shall be construed to limit the right of the Department Director or the City Manager, as contained in Article 6.6, of this Agreement, to determine the days of the week and hours of each day when any such part-time employee shall be required to work, or whether such part-time employee shall work at all, notwithstanding the above mentioned designation, scheduling and assignment.

24.9. Bereavement leave shall be granted to eligible part-time employees on the same basis and subject to the same restrictions, conditions and limitations as apply to such leave with pay and such compensation for full-time employees pursuant to Section 22.1; provided, however, that each eligible part-time employee shall be entitled to bereavement leave with pay for a number of hours based on the number of hours per week such part-time employee is indefinitely assigned to working the employee's regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week scheduling:

Regularly scheduled hours per week: Hours of Bereavement Leave with Pay:

- | | |
|---------------|----------------|
| • 30-34 hours | Up to 30 hours |
| • 25-29 hours | Up to 25 hours |
| • 20-24 hours | Up to 20 hours |

ARTICLE 25 RETIREMENT

25.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.

25.1.1 Administrative costs of the Federated Retirement System are to be paid from the retirement fund.

ARTICLE 26 ANNUAL PERFORMANCE EVALUATION

26.1 The purpose of the annual performance evaluation is to have formal communication between supervisor and employee regarding job performance.

26.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal work site dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.

26.3 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.

26.4 Key Element Review. If the employee formally receives an overall performance rating of meets standard, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director or designee. The employee must submit a written request to the Director or designee specifying the reasons for such request, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Director or designee shall look into the request and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Director or designee shall be final and binding.

26.5 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below "meets standard," the employee may appeal the rating. Such appeal shall be made to the Department Director or designee within thirty (30) calendar days from the date the employee receives the final performance appraisal. If the employee is dissatisfied with the decision of the Department Director or designee, he/she may, within thirty (30) calendar days from the Department Director's or designee's response, request a hearing with the City Manager or designated representative. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decision previously rendered.

26.5.1 The City Manager or designated representative shall hold a hearing within a reasonable time, and within ten (10) work days of the hearing shall inform the employee of the decision. The decision of the City Manager shall be final. This will be the only appeal process applicable to review a performance appraisal. The employee shall have the right to Employee Organization representation at the hearing with the Department Director or the City Manager.

26.5.2 If the employee formally receives an overall performance rating that is at or above "meets standards" and is not satisfied with the appraisal, the employee may write a rebuttal within thirty (30) calendar days from the date the employee receives the final performance appraisal. The rebuttal, along with the performance appraisal, will be included in the employee's personnel file. The rebuttal may be in response to the entire appraisal or any particular section(s). If the employee indicates to the supervisor an intent to appeal or rebut the evaluation, the employee may request and receive a copy of the evaluation.

26.6 The right of appeal shall not apply to probationary performance ratings.

26.7 All employees represented by the Employee Organization shall be evaluated using the standard performance evaluation form as designated by Employee Services and the Office of Employee Relations. Any changes to the performance evaluation form shall be provided in advance to the Employee Organization pursuant to Article 37 of this agreement.

ARTICLE 27 DISCIPLINARY ACTION

27.1 In the event of a suspension of five (5) days or greater, the City will provide the employee with a Notice of Intended Discipline and a "Skelly" hearing prior to the imposition of the discipline. In cases involving suspensions of less than five (5) days, the City may elect to impose the discipline prior to holding the "Skelly" hearing.

27.2 Step Reduction. The San Jose Municipal Code defines disciplinary action as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the amount and length of time of the salary reduction will be specified in the Notice of Intended Discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

ARTICLE 28 PROBATIONARY PERIODS

28.1 Probationary periods shall not be less than six (6) or twelve (12) months of actual service as determined by the Civil Service Commission. Actual service shall mean regular hours worked, paid holidays and up to 80 hours of other cumulative or consecutive paid or unpaid absences.

28.2 An employee's probationary period may be extended at the discretion of the City up to a maximum of three (3) months of actual and continuous service. The employee will be notified in writing of the length and reason of the extension.

ARTICLE 29 JOB SHARING

The City will develop procedures for job sharing. These will include procedures for departments to job share existing full-time positions, and to request shared positions in the budget as well as personnel procedures for employee requests, benefits, and other rules.

ARTICLE 30 TIME DONATION PROGRAMS

Employees may donate time to eligible employees as outlined in the Time Donation Programs Section in the City Policy Manual.

ARTICLE 31 REDUCED WORKWEEK

The following is the program for reduced work schedules:

31.1 Eligibility. Full-time employee.

31.2 Rules. Employee may request a reduced workweek for personal or medical reasons. The department's approval is completely discretionary when the request is for personal reasons.

When the request is to accommodate an attempt by the employee to return to work from an illness or injury, the department will make reasonable accommodation to facilitate the employee's return to full duty via a reduced schedule which is deemed to be medically appropriate. The employee may be required to provide medical verification for the necessity of a reduced schedule.

31.3 An employee who elects one of the options above shall be paid a salary which equals the hourly rate for the salary range and step to which he/she would otherwise be entitled pursuant to this Agreement times the number of hours actually worked during each biweekly pay period.

31.4 Procedure. Each employee electing one of the options specified above shall enter into a written agreement with his/her department to work under the terms of the voluntary reduced workweek schedule elected and approved by the department.

The Agreement may be approved for a period of up to six (6) months and may be renewed as long as the schedule is mutually acceptable. Either party may require the return to full time status with reasonable notice.

31.5 Any voluntary reduced workweek agreement entered into shall terminate immediately upon the effective date of the transfer, promotion, or demotion of the employee entering into such agreement.

31.6 Neither the failure of a department to enter into a voluntary reduced workweek agreement with any employee nor the termination by a department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12 of this Agreement.

31.7 Benefits Defined. The City's contribution for premiums for health, dental, and life insurance will be prorated from the amount contributed for full time employees, based on the number of hours scheduled, as follows:

- a. 35-40 hours 100%
- b. 30-34 hours 75%
- c. 25-29 hours 62.5%
- d. 20-24 hours 50%
- e. Less than 20 None

31.7.1 Benefits which accrue on an hourly basis:

- a. Vacation
- b. Sick Leave
- c. Seniority
- d. Retirement (Note that retirement contributions will be deducted as a percentage of salary earned and that service credit will be defined in the applicable San Jose Municipal Code.)

31.7.2 Holiday Benefits

31.7.2.1 Paid Holiday leave shall be granted to employees on a reduced work schedule based on the number of hours per week the employee is regularly scheduled to work under his/her reduced schedule. Holiday compensation for such employees shall be as follows:

<u>Regularly Scheduled Hours per Week</u>	<u>Hours of Paid Leave For Each Holiday</u>
35-39	8 Hours
30-34	6 Hours
25-29	5 Hours
20-24	4 Hours
Less than 20	0

31.7.2.2 If a holiday falls on a day in which the employee is regularly scheduled to work a number of hours in excess of the paid holiday leave listed above, he/she shall arrange in advance with his/her supervisor to either work additional hours on another day of the week or to take vacation, compensatory time off or lost time for the excess hours.

ARTICLE 32 ALTERNATIVE WORK SCHEDULE

32.1 The City and the Employee Organization agree that the availability of Alternative Work Schedules is a valuable benefit to employees in that it promotes job satisfaction, and is of benefit to the City in that it reduces traffic congestion and demands on limited parking facilities. The use of alternate schedules is encouraged, where it can be accommodated without impairing departmental operations or public service.

32.2 As an alternative to the normal work schedule assigned by the Department in accordance with Article 6.3, and subject to the concurrence and approval of respective

Department Directors, a regular full-time employee may elect to work an alternate work schedule. The following conditions and restrictions apply to all employees electing an alternate schedule.

32.2.1 An employee may elect to establish a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours, and total scheduled hours may not exceed eighty (80) hours in any biweekly pay period. Unless otherwise specified in this Memorandum of Agreement, alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly period. Examples of schedules which may be elected include:

- Four 10-hour days each week
- Four 9-hour days and one 4-hour day each week
- Eight 9-hour days, one 8-hour day, and one day off each biweekly pay period

32.2.2 No alternate work schedule may be established in which overtime is incurred as a part of the established work schedule either under this agreement or under Federal or State law.

32.2.3 The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.

32.2.4 It is further understood that any alternate schedule agreement entered into pursuant to the provisions herein shall terminate immediately upon the date of the transfer, promotion or demotion of the employee.

32.2.5 Neither the failure of the Department to enter into an alternate schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12. An employee may have the denial of an alternate work schedule reviewed by the Department Director. The decision of the Department Director shall be final.

32.2.6 For a schedule of four (4) ten (10) hour days, the three (3) consecutive days off may be waived by mutual agreement.

32.3 Holidays and Other Paid Leave For Alternate Schedules

The following provisions for holiday and other paid leave shall apply to employees on an alternate work schedule.

32.3.1 If an employee takes paid leave (e.g., holiday, sick leave, vacation, compensatory time off, etc.) on a scheduled workday, he/she shall be entitled to pay for the number of hours he/she was scheduled to work that day.

32.3.2 If a holiday is observed on an employee's scheduled day off, he/she shall be credited with eight (8) hours compensatory time off at the 1.0 rate for a full day holiday, or four (4) hours compensatory time off at the 1.0 rate for a four (4)-hour holiday.

32.3.3 If a four (4)-hour holiday is observed on a day on which the employee is scheduled to work nine (9) or ten (10) hours, he/she shall receive four (4) hours of paid holiday leave. The employee shall arrange in advance with his/her supervisor to either work the remaining hours of the scheduled workday, or to work four (4) hours and take the remaining time off as vacation, compensatory time off or lost time.

32.3.4 If an employee on an alternate schedule works on a holiday, the employee shall receive eight (8) hours of compensatory time at the 1.0 rate for a full day holiday, or four (4) hours of compensatory time at the 1.0 rate for a four (4) hour holiday, and in addition shall receive pay or compensatory time off at the 1.5 rate for the number of hours actually worked.

ARTICLE 33 EMPLOYEE SERVICES POOL ASSIGNMENTS

33.1 An Employee Services pool employee who has completed 2,080 hours of actual time worked in full-time service in the same assignment shall be granted regular employment status and receive benefits if the following conditions are met.

- A vacancy exists in a class in the department which the employee is eligible to fill.
- The department selects the employee for regular employment status.

33.2 An Employee Services pool employee who has completed 2,080 hours of actual time worked in full-time service in the same assignment and who does not meet the conditions listed in 33.1 shall not be eligible for benefits and shall be removed from the position.

33.3 Employee Services Pool employees who are assigned and work in excess of forty (40) hours per week shall be compensated at the time and one-half (1-1/2) rate. A part-time employee who is assigned and works in excess of forty (40) hours per week may elect to either be paid for such overtime or credited with compensatory time off, provided the following:

- a. the employee makes such election during the pay period in which the overtime is worked.
- b. in the event the employee requests payment for such overtime, the department's budget can accommodate such payment.

33.4 However, at no time shall an Employee Services pool employee's compensatory time balance exceed forty (40) hours. Once an employee's compensatory time balance reaches forty (40) hours, employees shall be paid for all time assigned and worked in excess of forty (40) hours per week.

33.5 Notwithstanding any other provision of Section 6.9 to the contrary, the Director of a Department may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced intent may apply to an entire department or to a specified section(s) of a department. The announcement will also specify a date by which time each affected employee must elect to either:

- 33.5.1 be paid for all accrued, unused compensatory time, OR
 - 33.5.2 be paid for all but twenty-four (24) hours of such accrued, unused compensatory time, OR
 - 33.5.3 retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.10.
- 33.6 Any employee not making an election will retain his/her compensatory time, subject to other provisions of this Section.
- 33.7 If an Employee Services pool employee is scheduled and reports to work for a shift which is then canceled, the employee shall, at the City's discretion, either work a minimum of two (2) hours or be credited with two (2) hours work at the employee's straight time pay rate. The employee is not entitled to the two (2)-hour minimum if:
- a. the pool employee is notified prior to the start of the shift that the shift is canceled; or
 - b. the pool employee is scheduled to work less than two (2) hours.

ARTICLE 34 EMPLOYEE LISTS

The City shall provide at no charge to the Union, a monthly printout listing changes in membership status by employee name by department and position, and full-time equivalency. The City shall also provide at no charge to the Union, a quarterly printout listing bargaining unit employees alphabetically by employee address, position title, employment date, full-time equivalency, and leave of absence status. The Union agrees that such information will be treated in a confidential manner.

ARTICLE 35 NEW EMPLOYEE ORIENTATION

The City shall provide designated CEO representative(s) reasonable access to new employees during the new employee orientation, in conjunction with the City's Procedures and Policies to provide information on the union. Attendance at any presentations by CEO shall be voluntary on the part of the new employee. The Employee Services Department shall work out arrangements with designated CEO representatives.

ARTICLE 36 PERSONNEL FILES

- 36.1 The City Employee Services Director shall keep a central personnel file for each employee; departments, at their option, may keep a duplicate departmental personnel file. An employee, or with written authorization by the employee, his/her designee, shall be permitted to examine their own personnel file on appointment during normal business hours. Employees shall be provided copies of materials in their personnel files at a cost not to exceed the actual cost of duplication, unless such materials are to be used in conjunction with the processing of a grievance or appeal filed by the employee.

- 36.1.1 Items excluded from the examination of the personnel file are:

1. Items obtained prior to the employment of the person involved, such as reference checks and pre-employment examinations.
 2. Items obtained in connection with a promotional and/or interview examination.
- 36.2 Adverse comments, except material mentioned above, shall not be entered or filed unless the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right to enter and have attached to any such adverse comments his/her own written comments within thirty (30) calendar days of receipt.

ARTICLE 37 ADVANCE NOTICE

- 37.1 Except in cases of emergency, advance written notice shall be given to the Union affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council, any board or commission, or department, and shall be given ten (10) working days to respond prior to implementation.
- 37.2 In cases of emergency when the City Council, City Manager or Department Director determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice, City management shall provide such notice at the earliest practical time.

THIS AGREEMENT executed on the 16TH of September 2005, between the City of San Jose and the Confidential Employees' Organization, AFSCME, Local No. 101, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.

This Memorandum of Agreement is subject to approval by the City Council of the City of San Jose and the appropriate representative of the Confidential Employees' Organization, AFSCME, Local No. 101.

FOR THE CITY OF SAN JOSE:

FOR THE CONFIDENTIAL EMPLOYEES'
ORGANIZATION:

Del D. Borgsdorf
City Manager

Deborah A. Powell
CEO President

Alex Gurza
Director of Employee Relations

Trish L. Glassey
CEO Vice President

Gina Donnelly
Employee Relations Manager

Elizabeth A. Kaylor
Secretary

Jennifer Schembri
Executive Analyst

Cheri M. Good
CEO Delegate

Joe Cardinalli
Deputy Director, PRNS

Linda A. Dittes
CEO Business Agent

Dan Tong
Chief of Staff, City Attorney's Office

EXHIBIT I
CONFIDENTIAL EMPLOYEES' ORGANIZATION
SALARY SCHEDULE
Effective September 25, 2005

Job Code	Job Title	Steps	Min Hourly	Max Hourly	Min Biweekly	Max Biweekly
1159	Administrative Assist C	5	\$25.21	\$30.64	\$2,016.80	\$2,451.20
1627	Analyst I C	5	\$28.23	\$34.32	\$2,258.40	\$2,745.60
1630	Analyst I C PT	5	\$28.23	\$34.32	\$2,258.40	\$2,745.60
1632	Analyst II C	5	\$30.80	\$37.44	\$2,464.00	\$2,995.20
1635	Analyst II C PT	5	\$30.80	\$37.44	\$2,464.00	\$2,995.20
8028	Assoc Legal Analyst	5	\$25.21	\$30.64	\$2,016.80	\$2,451.20
8029	Assoc Legal Analyst PT	5	\$25.21	\$30.64	\$2,016.80	\$2,451.20
1167	Legal Admin Assist I C	5	\$22.13	\$26.90	\$1,770.40	\$2,152.00
1153	Legal Admin Assist I C PT	5	\$22.13	\$26.90	\$1,770.40	\$2,152.00
1168	Legal Admin Assist II C	5	\$25.21	\$30.64	\$2,016.80	\$2,451.20
1154	Legal Admin Assist II C PT	5	\$25.21	\$30.64	\$2,016.80	\$2,451.20
1165	Legal Admin Assist Trainee	5	\$20.35	\$24.77	\$1,628.00	\$1,981.60
2123	Legal Analyst I	5	\$28.23	\$34.32	\$2,258.40	\$2,745.60
2128	Legal Analyst I PT	5	\$28.23	\$34.32	\$2,258.40	\$2,745.60
2120	Legal Analyst II	5	\$30.80	\$37.44	\$2,464.00	\$2,995.20
2118	Legal Analyst II PT	5	\$30.80	\$37.44	\$2,464.00	\$2,995.20
8555	Network Engineer C FT	5	\$35.85	\$43.60	\$2,868.00	\$3,488.00
8556	Network Engineer C PT	5	\$35.85	\$43.60	\$2,868.00	\$3,488.00
8551	Network Technician I C FT	5	\$27.29	\$33.18	\$2,183.20	\$2,654.40
8552	Network Technician I C PT	5	\$27.29	\$33.18	\$2,183.20	\$2,654.40
8553	Network Technician IIC FT	5	\$30.24	\$36.78	\$2,419.20	\$2,942.40
8554	Network Technician IICPT	5	\$30.24	\$36.78	\$2,419.20	\$2,942.40
1127	Office Specialist I C	5	\$17.17	\$20.87	\$1,373.60	\$1,669.60
1129	Office Specialist I C PT	5	\$17.17	\$20.87	\$1,373.60	\$1,669.60
1131	Office Specialist II C	5	\$18.38	\$22.33	\$1,470.40	\$1,786.40
1134	Office Specialist II C PT	5	\$18.38	\$22.33	\$1,470.40	\$1,786.40
1157	Secretary C	5	\$22.89	\$27.83	\$1,831.20	\$2,226.40
1161	Secretary To Mayor	5	\$26.36	\$32.05	\$2,108.80	\$2,564.00
1623	Staff Technician	5	\$25.21	\$30.64	\$2,016.80	\$2,451.20

EXHIBIT II
CONFIDENTIAL EMPLOYEES' ORGANIZATION
SALARY SCHEDULE
Effective September 24, 2006

Job Code	Job Title	Steps	Min Hourly	Max Hourly	Min Biweekly	Max Biweekly
1159	Administrative Assist C	5	\$26.16	\$31.79	\$2,092.80	\$2,543.20
1627	Analyst I C	5	\$29.29	\$35.61	\$2,343.20	\$2,848.80
1630	Analyst I C PT	5	\$29.29	\$35.61	\$2,343.20	\$2,848.80
1632	Analyst II C	5	\$31.96	\$38.84	\$2,556.80	\$3,107.20
1635	Analyst II C PT	5	\$31.96	\$38.84	\$2,556.80	\$3,107.20
8028	Assoc Legal Analyst	5	\$26.16	\$31.79	\$2,092.80	\$2,543.20
8029	Assoc Legal Analyst PT	5	\$26.16	\$31.79	\$2,092.80	\$2,543.20
1167	Legal Admin Assist I C	5	\$22.96	\$27.91	\$1,836.80	\$2,232.80
1153	Legal Admin Assist I C PT	5	\$22.96	\$27.91	\$1,836.80	\$2,232.80
1168	Legal Admin Assist II C	5	\$26.16	\$31.79	\$2,092.80	\$2,543.20
1154	Legal Admin Assist II C PT	5	\$26.16	\$31.79	\$2,092.80	\$2,543.20
1165	Legal Admin Assist Trainee	5	\$21.11	\$25.70	\$1,688.80	\$2,056.00
2123	Legal Analyst I	5	\$29.29	\$35.61	\$2,343.20	\$2,848.80
2128	Legal Analyst I PT	5	\$29.29	\$35.61	\$2,343.20	\$2,848.80
2120	Legal Analyst II	5	\$31.96	\$38.84	\$2,556.80	\$3,107.20
2118	Legal Analyst II PT	5	\$31.96	\$38.84	\$2,556.80	\$3,107.20
8555	Network Engineer C FT	5	\$37.19	\$45.24	\$2,975.20	\$3,619.20
8556	Network Engineer C PT	5	\$37.19	\$45.24	\$2,975.20	\$3,619.20
8551	Network Technician I C FT	5	\$28.31	\$34.42	\$2,264.80	\$2,753.60
8552	Network Technician I C PT	5	\$28.31	\$34.42	\$2,264.80	\$2,753.60
8553	Network Technician IIC FT	5	\$31.37	\$38.16	\$2,509.60	\$3,052.80
8554	Network Technician IICPT	5	\$31.37	\$38.16	\$2,509.60	\$3,052.80
1127	Office Specialist I C	5	\$17.81	\$21.65	\$1,424.80	\$1,732.00
1129	Office Specialist I C PT	5	\$17.81	\$21.65	\$1,424.80	\$1,732.00
1131	Office Specialist II C	5	\$19.07	\$23.17	\$1,525.60	\$1,853.60
1134	Office Specialist II C PT	5	\$19.07	\$23.17	\$1,525.60	\$1,853.60
1157	Secretary C	5	\$23.75	\$28.87	\$1,900.00	\$2,309.60
1161	Secretary To Mayor	5	\$27.35	\$33.25	\$2,188.00	\$2,660.00
1623	Staff Technician	5	\$26.16	\$31.79	\$2,092.80	\$2,543.20

EXHIBIT III
CONFIDENTIAL EMPLOYEES' ORGANIZATION
SALARY SCHEDULE
Effective September 23, 2007

Job Code	Job Title	Steps	Min Hourly	Max Hourly	Min Biweekly	Max Biweekly
1159	Administrative Assist C	5	\$26.94	\$32.74	\$2,155.20	\$2,619.20
1627	Analyst I C	5	\$30.17	\$36.68	\$2,413.60	\$2,934.40
1630	Analyst I C PT	5	\$30.17	\$36.68	\$2,413.60	\$2,934.40
1632	Analyst II C	5	\$32.92	\$40.01	\$2,633.60	\$3,200.80
1635	Analyst II C PT	5	\$32.92	\$40.01	\$2,633.60	\$3,200.80
8028	Assoc Legal Analyst	5	\$26.94	\$32.74	\$2,155.20	\$2,619.20
8029	Assoc Legal Analyst PT	5	\$26.94	\$32.74	\$2,155.20	\$2,619.20
1167	Legal Admin Assist I C	5	\$23.65	\$28.75	\$1,892.00	\$2,300.00
1153	Legal Admin Assist I C PT	5	\$23.65	\$28.75	\$1,892.00	\$2,300.00
1168	Legal Admin Assist II C	5	\$26.94	\$32.74	\$2,155.20	\$2,619.20
1154	Legal Admin Assist II C PT	5	\$26.94	\$32.74	\$2,155.20	\$2,619.20
1165	Legal Admin Assist Trainee	5	\$21.74	\$26.47	\$1,739.20	\$2,117.60
2123	Legal Analyst I	5	\$30.17	\$36.68	\$2,413.60	\$2,934.40
2128	Legal Analyst I PT	5	\$30.17	\$36.68	\$2,413.60	\$2,934.40
2120	Legal Analyst II	5	\$32.92	\$40.01	\$2,633.60	\$3,200.80
2118	Legal Analyst II PT	5	\$32.92	\$40.01	\$2,633.60	\$3,200.80
8555	Network Engineer C FT	5	\$38.31	\$46.60	\$3,064.80	\$3,728.00
8556	Network Engineer C PT	5	\$38.31	\$46.60	\$3,064.80	\$3,728.00
8551	Network Technician I C FT	5	\$29.16	\$35.45	\$2,332.80	\$2,836.00
8552	Network Technician I C PT	5	\$29.16	\$35.45	\$2,332.80	\$2,836.00
8553	Network Technician IIC FT	5	\$32.31	\$39.30	\$2,584.80	\$3,144.00
8554	Network Technician IICPT	5	\$32.31	\$39.30	\$2,584.80	\$3,144.00
1127	Office Specialist I C	5	\$18.34	\$22.30	\$1,467.20	\$1,784.00
1129	Office Specialist I C PT	5	\$18.34	\$22.30	\$1,467.20	\$1,784.00
1131	Office Specialist II C	5	\$19.64	\$23.87	\$1,571.20	\$1,909.60
1134	Office Specialist II C PT	5	\$19.64	\$23.87	\$1,571.20	\$1,909.60
1157	Secretary C	5	\$24.46	\$29.74	\$1,956.80	\$2,379.20
1161	Secretary To Mayor	5	\$28.17	\$34.25	\$2,253.60	\$2,740.00
1623	Staff Technician	5	\$26.94	\$32.74	\$2,155.20	\$2,619.20

EXHIBIT IV
CONFIDENTIAL EMPLOYEES' ORGANIZATION
SUBSTANCE ABUSE PROGRAM

Purpose

It is the policy of the City of San José to maintain a safe, healthful and productive work environment for all employees. To that end, the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce.

This policy provides guidelines for self-referral and rehabilitation/treatment options for employees that may be experiencing a problem with alcohol and/or drug use and for-cause alcohol and/or drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San Jose.

Policy

It is the policy of the City that employees:

- shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;
- while on duty shall not use, possess, sell or provide drugs or alcohol;
- shall not have their ability to work impaired as a result of the use of alcohol or drugs.

An employee is required to notify his/her supervisor, or Employee Health Services, when the employee knows that any medications or drug he/she is taking could create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Employee Services for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy shall be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis when requested by management will constitute insubordination which alone will form a basis for discipline.

Application

A. Personnel

1. Full-time and permanent, benefited part-time employees represented by: **Confidential Employees' Organization, AFSCME, Local 101.**

B. Substances

1. alcohol;
2. illegal drugs; and
3. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

Employee Responsibilities

An employee must:

- A. not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- B. not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours, on breaks, or while operating any City vehicle or equipment;
- C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;
- D. submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by an authorized representative of a Department Director and may request a union representative;
- E. notify his/her supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which the employee knows may create an unsafe or dangerous situation for the public or the employee's coworkers including, but not limited to tranquilizers, muscle relaxants and painkillers, and
- F. provide within twenty-four (24) hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

Management Responsibilities and Guidelines

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
- B. A Department Director or authorized representative may direct that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol and a city physician or other qualified medical professional concurs that such a test is appropriate. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable, prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- 1. A pattern of documented abnormal or erratic behavior;
 - 2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and the Union;
 - 3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
 - 4. A work related accident in conjunction with other facts which together support reasonable cause.
- C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to directing an employee to submit to a drug and/or alcohol analysis. If the employee requests Union representation, the employee will be allowed the opportunity to secure such representation. The process for directing an employee to submit to a drug and/or alcohol test is outlined below (number 1 - 7).

Additionally, if an employee believes an employee not under his/her supervision has a problem and should be tested or referred, he/she should contact the Office of Employee Relations who will notify the Department Director. Should the Department Director concur that the employee appears to be in violation of the policy, the following shall also apply:

- 1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs. This information shall be stated on the Documentation of Employee Misconduct form.
- 2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Medical Services or emergency room where a drug and/or alcohol test will be requested.

3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon direction shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
 4. Managers and supervisors shall not physically search employees.
 5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession.
 6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
 7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.
- D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to disciplinary action. Actual results of the initial screening shall be subject to confidentiality provisions as stated in this policy. The employee's decision to attend or not attend follow-up sessions shall be voluntary.
- E. Demands for drug or alcohol analysis by supervisors or managers, which are determined to be malicious will not be tolerated and will subject the directing individual to disciplinary action.
- F. Results of Drug and/or Alcohol Analysis:
1. Upon a negative result, the employee shall return to work if otherwise fit for duty. Employee may be subject to disciplinary action for other violations of this policy or any other misconduct.
 2. If the test result is positive, the following shall apply:

First Offense: In an effort to encourage the employee to take responsibility for his/her problem, the first violation of this policy will result in a formal, mandatory referral to the Employee Assistance Program (EAP), using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. EAP will assess the employee's need for treatment. An employee declining to be evaluated by EAP may be subject to disciplinary action independent of any other misconduct. Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty (30) percent of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however, misconduct, including being under the influence of drugs and/or alcohol in the workplace and/or while on duty and/or while on standby, or any action constituting a violation of this policy will continue to be subject to discipline and, therefore, subject to applicable due process for City employees.

3. **Second Offense:** During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second violation of this policy, subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost. The employee may request a split sample be tested at another facility at City expense to provide a second, independent result.

Confidentiality

Laboratory reports or test results, if positive only, shall appear in the employee's confidential medical file. The reports or test results may be disclosed to the employee's Department Director and Employee Services Director on a strictly need-to-know basis, and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and the employee, including employee discipline; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Procedure: Drug Testing

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by Employee Medical Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial test if the amount exceeds the minimum detection levels defined in the City of San Jose Substance Abuse Program and Policy Drug Minimum Detection Levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

Substance Abuse Treatment

The City will make substance abuse treatment available to employees represented by the Confidential Employees Organization in the following way:

1. Self Referral

- A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at the EAP.
- B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The EAP will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
- C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.

2. Formal Referrals

- A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the EAP and define issues.
- B. The employee will be advised to go to the EAP for evaluation. Any participation in treatment is voluntary.
- C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

3. Positive Drug Test

- A. The first time an employee tests positive on a drug test, the Department Director will contact EAP and initiate a formal referral. An evaluation by the EAP is mandatory. Participation in treatment is voluntary.
- B. The employee will sign a release allowing the EAP to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

4. Settlement of a Proposed Discipline

- A. If an employee has received a Notice of Intended Discipline for misconduct or job performance, either on or off the job, which has a substance abuse component, the City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.
- B. The specific terms of the agreement are determined on a case-by-case basis - including requiring the employee to submit to follow-up random drug and/or alcohol testing for a specified period of time. The intent, however, is not to relieve the employee of responsibility for his/her actions. It is to encourage maximum access to rehabilitation.

5. Funding

The City will pay seventy percent (70%) of the treatment costs which are not covered by the employee's health insurance for one treatment program. The employee will pay thirty percent (30%) of treatment costs for a plan approved by the EAP for the employee.

SCOPE OF SERVICES

1. Provide gatekeeping and case management chemical dependency problems of employees represented by the **Confidential Employees' Organization (CEO), AFSCME, Local 101**. This service is to include assessment, referral to high quality treatment facilities, pre-certification, and post treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

COMPONENTS

1. Assessment

Covered employees may be self-referred to **Employee Assistant Program (EAP)** or referred by a supervisor from the City of San José. **EAP** will provide a clinical assessment for the most appropriate level of treatment. (see Tracks A,B,C). Treatment options include:

Structured Inpatient Program: Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service which is a free-standing residential facility

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include detoxification waiting period.

Structured Outpatient Program: Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

Alcoholics Anonymous and Alanon: When chemical dependency is in an early stage, intensive participation in AA or related affiliates in conjunction with supportive counseling at **EAP** may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

2. Referral

Criteria have been developed at **EAP** to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on this criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to insure that the most cost effective recommendations are made. Referrals are made to quality programs to insure the best chance of success.

3. Pre-certification

Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and

notify the City of San José of the referral for billing purposes. Should an emergency or a self-admission be initiated, **EAP** will evaluate the employee within 48 hours and make a recommendation for continued treatment, and notify the City of San José Department of Employee Services. The section on Gatekeeping Procedures outlines the steps **EAP** will take in this process.

4. Case Management

EAP counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.

- Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
- Participate in the development of a recovery plan with the client, the family and the treatment team.
- Continued counseling with client and family as necessary after discharge from treatment facility for one (1) year.
- Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
- Provide relapse prevention education and therapy groups as appropriate.

5. Treatment Program

Treatment Program is considered to have the following components:

- Inpatient or outpatient treatment, or a combination of both
- Treatment aftercare program
- **EAP** case management for up to a year following treatment.

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

Treatment will be covered if it is provided by one of **EAP's** recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.

6. Tracks

There are three sets of procedures (tracks) for initiating chemical dependency treatment:

TRACK A: Assessment at EAP and Referral to Treatment facility

- A. Client is assessed at **EAP** with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Department of Employee Services.
- C. Treatment program is contacted by telephone to notify them that the client is coming and that:
1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
 2. The program should contact City of San José Department of Employee Services to confirm eligibility.
- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:
- a. Treatment facility
 - b. City of San José Department of Employee Services
 - c. Client (at home address)
- E. Counselor interaction with treatment program during treatment will be as follows:
- **Outpatient:** Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.
 - **Inpatient:** Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.
 - Keep in contact on a weekly basis via telephone or letter.
 - Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact **EAP** therapist for appointment and that there are resources available to the employee via the union or the **EAP**.
- F. Provide authorization for alterations or extension of treatment as necessary.
- G. Continue contact a minimum of once a month for the first six (6) months. Monitor the client's progress and participation in aftercare. (**EAP** will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.
- H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and **EAP** case management, or:
- a. If the client fails to attend aftercare.
No more than two (2) unexcused absences.
Reasons for non-attendance must be cleared through **EAP** therapist.
 - b. Failure to attend follow-up counseling with **EAP** as agreed upon with their counselor.

- I. Notify City of San José Department of Employee Services and the client, in writing, when the "treatment program" is terminated or completed.

TRACK B: Emergency Admission to Treatment Facility

- A. Employee presents to a treatment facility. Facility calls City of San José Department of Employee Services to determine eligibility and coverage.
- B. City of San José Department of Employee Services will confirm eligibility and notify the facility that authorization is required through **EAP** beyond the initial 48-hour period of coverage.
- C. **EAP** will visit the treatment facility and assist the client within the 48 hours.
- D. If it is determined the client needs inpatient treatment, and
 - the treatment facility is an **EAP** recommended facility, authorization will be given as outlined in Track A.
 - the treatment facility is not an **EAP** recommended facility, **EAP** will facilitate a transfer to a recommended facility.
- E. If outpatient treatment is recommended and client agrees with the treatment course, **EAP** will facilitate the referral and authorize as indicated in Track A.

TRACK C: Second Treatment

- A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by **EAP**. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

RECOMMENDED TREATMENT PROGRAM

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) quality of program to meet the needs of the employee
- 2) location in relation to employee, and
- 3) cost

EAP will assist in the negotiation of preferred provider rates at the City's request.

The City of San Jose will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San Jose each month the contracted rate per covered employee for all gatekeeping services. The City of San Jose will be responsible for the cost of all recommended treatment services for covered employees.

Confidential Employee's Organization Enrollment Opportunity

If you have questions about membership in the Confidential Employee's Organization (CEO), Local 101, AFSCME, AFL-CIO, please contact a CEO representative or the AFSCME Local office at (408) 277-4329. Or, if you would like to join CEO, please complete the form on the opposite side of this sheet, and submit to a CEO representative.

Membership Application
Confidential Employees' Organization, AFSCME, Local 101

Applicant's Employer: _____ Dept: _____

Applicant's Name _____
First Name Middle Initial Last Name Job Title

Soc. Sec. No.: _____ Birthdate: _____ Male/Female _____

Home Address _____
Number/Street Apt. No.

_____ City State Zip Code

Hours Worked Per Week: _____ 40 _____ 25 to 39 _____ 13 to 24 _____ 0-12 (Please mark X)

Home Phone: _____ Work Phone: _____

I, the undersigned, wish to apply for membership in Local 101 of the American Federation of State, County and Municipal Employees (AFSCME) and I hereby designate AFSCME as my authorized bargaining representative.

Signature of Applicant: _____ Date: _____

Authorization for Union Dues Deduction
Confidential Employees' Organization, AFSCME, Local 101

By: _____
(Please Print) First Name Middle Initial Last Name

To: _____ Soc. Sec. No.: _____
Name of Employer—**Attention: Payroll Department**

Effective immediately, I hereby request and authorize you to deduct from my earnings the monthly dues category checked below, or its pay period equivalent, to provide for the regular payment of the current amount of the dues rate established by Local 101, AFSCME, and administered in accordance with the Memorandum of Agreement between AFSCME and the above-named Employer. Any subsequent changes in the amount to be deducted shall be certified by AFSCME and automatically implemented by the Employer:

(Please mark X)

Dues Category: _____ 40 Hrs/Wk _____ 25 to 39 Hrs/Wk
_____ 13 to 24 Hrs/Wk _____ 0 to 12 Hrs/Wk

Dues, fees, contributions, or gifts to AFSCME are not deductible as charitable contributions for federal income tax purposes. Dues or fees paid to AFSCME may qualify as business expenses and may be deducted in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

Signature of Applicant: _____ Date: _____

